UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:)	
UNITED PARCEL SERVICE, INC.,)))	
Respondent,)	
<u>-</u>) Case No. 26-CA-072915	
And) 26-CA-076655	
) 26-CA-078241	
TEAMSTERS LOCAL UNION NO. 480,		
affiliated with INTERNATIONAL)	
BROTHERHOOD OF TEAMSTERS,)	
)	
Charging Party.)	

REPLY BRIEF IN SUPPORT OF EXCEPTIONS ON BEHALF OF UNITED PARCEL SERVICE, INC.

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SUMMARY OF ARGUMENT

The General Counsel argues that UPS violated the Act when it attempted to respond to over 1,600 information requests over a five-year period, many of which were incomplete, ambiguous, and arguably not useful or relevant. Like the Union, the General Counsel posits that every document requested should have been produced immediately. This position ignores the totality of the record evidence and the ALJ's credibility findings that the Union lacked a genuine need in receiving the requested information to process its grievances, abused the information request process by using tactics specifically designed to prevent UPS from adequately and appropriately responding, and the Union was more interested in documenting its requests for information than it was in actually obtaining the requesting information. See ALJ Decision at 17, 27-34. The overwhelming number of the Union's information requests coupled with its unwillingness to discuss, in good faith, the timing, duplicity, and scope of them proves the Union's bad faith. It is settled labor law that an employer need not provide information when a Union engages in a campaign to harass and overwhelm an employer with information requests, by, as it did here, submitting more than one information request (which included multiple subparts) each working day over a five-year period. See NLRB v. Wachter Const., Inc., 23 F.3d 1378, 1385 (8th Cir. 1994).

ARGUMENT

It is undisputed that the Union has a duty to bargain in good faith with an employer. NLRB v. Truitt Mfg., 351 U.S. 149, 153-54 (1956). That duty extends to the information request process. See Int'l Brotherhood of Teamsters, Local Union 373 v. United Parcel Service, Inc., JD(ATL)-21-12 (ALJ Locke, August 15, 2013). The General Counsel contends that UPS failed to bargain in good faith because: (1) UPS purportedly made the Union submit duplicative information requests; (2) the Union's "cookie cutter" information requests (i.e., shift reports,

staffing reports, time cards, weekly operating reports and payroll histories) were, according to it, "germane," "specific," and "narrowly tailored;" (3) the Union requested information that was in its opinion "readily available" at the time the request was made; and (4) UPS intentionally failed to produce, and delayed in producing, responsive documents in order to reduce its overtime costs. None of these contentions are supported by the record.

A. UPS Did Not Cause the Union to Submit Duplicative Information Requests

The Union intentionally submitted duplicative requests. The nature and timing of the Union's information requests prove that those duplicative requests were made in bad faith. UPS' inability to respond to the Union's information requests resulted directly from the Union's disproportionate number of requests. It is undisputed that: (1) the Union submitted over 700 information requests in a 5-month period, from September 2011 to January 2012, immediately preceding the filing of its first charge (all of which included multiple subparts), including 88 on September 25, 2011, 277 on October 10, 2011, and 57 on November 16, 2011; (2) UPS assigned a full-time employee to respond on behalf of UPS; (3) UPS took over 40 hours per week to respond to the Union's information requests; and (4) UPS was paralyzed by the Union's constant barrage of information requests. Tr. at 500, 576-77; GC Exhibit Nos. 1 and 2. These exceptional efforts belie that UPS somehow caused the Union to duplicate its requests. Indeed, the ALJ found just the opposite - that blame lies squarely with the Union. She explained:

"inundating [UPS] with multiple and duplicative requests for information ... essentially paralyze[d] [its] ability to adequately respond to such an inordinate number of multiple requests.... and that a disproportionate number of requests are unnecessarily duplicated. The requests appear to have no correlation to [UPS's] responses and provide no reasonable time period for a response. The timing and repetition of these requests raises a question concerning the Union's motivation... The Union repeated its... initial request without any acknowledgment that [UPS] had already provided [certain] information twice... [and there is] no evidence that the Union read, reviewed, or modified its requests in response

to the information that was furnished by [UPS]. Overall, the Union's response to [UPS's] production of records raises a question as to whether the Union's priority was the receipt of the requested information or the opportunity to assail [UPS] with additional information requests during a 10-week period in the months prior to the filing of the first charge."

See ALJ Decision at 16. Additionally, the Union itself characterizes many of its own requests as "pro forma and lacking detail," thereby, failing to put UPS on notice of what information was needed and contributed to duplicative requests. See Charging Party Brief in Support of Exceptions at 7. There are over 150 instances where the Union had requested incomplete and ambiguous information without any identifying information such as time frames, individuals, and departments involved. According to the General Counsel, citing no proof or evidence whatsoever, UPS only had to connect the dots in order to respond to these requests. See General Counsel Brief at 6, fn. 10. Even if that were true, which it is not, the Union's actions in clarifying its requests months, and, at times, more than a year later refutes this position. GC Exhibit Nos. 30-33, 35-69, 286-89, 296-98, 301-02, 318-22, 324-330, 332-39, 349-50, 355-56, 358-74, 379-98, 405-17, 419-20, 427-33, 438-41, 444, 448, 457-62, 465-66, 468, 470-473, 476. Again, the ALJ believed that UPS' ability to adequately respond was significantly hampered by the Union's use of nonspecific requests lending further support for the "argument concerning the Union's improper motivation." See ALJ Decision at 17, 35. While it is true that UPS produced some, but not all, of the information requested by the Union, that is not evidence of bad faith bargaining. See East Tenn. Baptist Hosp. v. NLRB, 6 F.3d 1139, 1144 (6th Cir. 1993); Safeway Stores Inc. v. NLRB, 691 F.2d 953, 956 (10th Cir. 1982). Rather, it is the result of the Union's attempt to overwhelm UPS with requests to ensure that UPS failed to comply with them and failure to "read or review" information provided to it. See ALJ Decision at 17-25, 34.

B. The Union's Boilerplate Information Requests Are Not "Germane," "Specific," or "Narrowly Tailored"

It is undisputed that the Union's five "cookie cutter" document requests for all 469 shifter-related grievances were not specific and narrowly tailored to those grievances. See ALJ Decision at 16-17. The central issue in each of these grievances is whether an employee performed shifter-related work on a particular date. According to the General Counsel, all of the "cookie cutter" documents were necessary and relevant because "no single document [could] provide the necessary information the Union needed to properly investigate and pursue credible [shifter-related] grievances." See General Counsel Brief at 4. This is directly refuted by Len Hughes' own testimony that a payroll history, which verifies who performed shifter-work on an "exact date and at an exact time," may be enough to determine whether or not a claim exists. Tr. at 184. That admission belies any contrary argument that the additional information was necessary.

In spite of this testimony, the General Counsel asserts that all five "cookie cutter" documents (even those with no identifying information) are necessary and relevant to every shifter-related grievance because of minor inconsistencies in a few of UPS' records. See General Counsel Brief at 19-20. The General Counsel's bold (and incorrect) assertion that UPS' documents are "unreliable" is not supported by the record cites, nor does the General Counsel cite to a single case that stands for the proposition that minor inconsistencies in an employer's documents necessitates the production of thousands of duplicative documents in each and every case. Neither the General Counsel nor the Union can explain why scores of these documents are needed prior to uncovering any inconsistency or error in them. Neither is there a logical reason for requesting multiple documents when a grievance can be substantiated (or not) by a single record. Such is the case, for example, in Grievance No. 16659 where UPS provided the Union

with time records that established that an inside employee was incorrectly performing shifting work as alleged by the grievant; yet for some unexplained reason the Union sought more. Tr. at 473, 477; GC Exhibit No. 320. Matt Webb, District Labor Manager, testified that only one additional document, at most, would be needed to connect the dots if there was an inaccuracy in a payroll record, establishing the need to review and follow-up, which the Union never did. Tr. at 525-26. The ALJ correctly concluded:

"[t]he Union routinely requested the same category of documents if the grievance related in any way to employees performing shifter work, without any apparent attention to whether these documents were actually required to analyze the merits of the grievances... The record demonstrates that the Union's use of these standard requests, in conjunction with the timing of its multiple requests, has also hindered the process of obtaining information from [UPS].

See ALJ Decision at 17. There is no obligation to provide repetitive and duplicative information, where, as here, the employers make a good faith objection that the information requested is duplicative and repetitive. See Soule Glass & Glazing Co. v. NLRB, 652 F.2d 1055, 1098 (1st Cir. 1981). Information requests must be tailored to "substantiate specific assertions on which [the union] premises its bargaining positions." KLB Industries v. NLRB, 700 F.3d 551, 563 (D.C. Cir. 2012); see also Coca-Cola Bottling Co., 311 NLRB 424, 425 (1993). A union cannot demand, as it did here, the production of voluminous records while remaining utterly unwilling to clarify the information sought or to limit the number of its requests. See Int'l Brotherhood of Teamsters, Local Union 373 v. United Parcel Service, Inc., JD(ATL)-21-12 (ALJ Locke, August 15, 2013) ("where agreeing to an appropriate accommodation would cause no harm, the refusal to narrow the request by eliminating redundant documents, or even to explain why all are needed, is evidence of a vindictive objective") emphasis supplied; Exxon Chemical Americas and Exxon Corp., 2000 WL 33664332 (ALJ Carson II, July 27, 2000) (noting that unreasonable

bargaining demands can be an indicia of bad faith bargaining). <u>Id</u>. Nor can the Union go on fishing expeditions when UPS does not agree with its position. Tr. at 59, 243, 245, 468, 473-75, 477; GC Exhibit No. 296, 320, and 448.

Albertsons Inc., 351 NLRB 254 (2007), cited by the General Counsel for support, is inapposite. There, the employer was not required to respond to thousands of information requests or required to expend countless hours managing the information request process. <u>Id.</u> at 271. The ALJ found that the Union had ulterior motives and was more interested in documenting requests than receiving information to prosecute grievances. Additionally, there is nothing in the record that implies that UPS purposefully concealed information from the Union or deliberately tried to sabotage the information request process by "interpos[ing] spurious objections and other improper impediments to disclosure" as did Albertsons. Id. at 271.

C. The Union Did Not Request "Readily Available" Information

The General Counsel argues, in hindsight, that UPS could have produced every document that the Union requested within a few short days of receiving a request simply because responsive documents fell within the document retention period (17 days for shifter reports). See General Counsel Brief at 5, 9. What the General Counsel fails to share is that the Union's initial document requests were incomplete and ambiguous. There is no obligation to respond to incomplete and ambiguous requests for information. See AMF Bowling Co. v. NLRB, 977 F.2d 141, 146 (4th Cir. 1992). In over 150 requests, the Union simply "listed the[] document categories at the bottom of [the] grievance without any specificity or identifying details" and waited months to clarify this request. See ALJ Decision at 17. For example, in Grievance No. 18626 (attached), the grievant alleged that he was improperly displaced on a midnight sort. On the front of the grievance, the union wrote the words "shifting reports, staffing reports, WOR's, payroll history, and time cards." GC Exhibit No. 39. There was no other identifying information

that would allow UPS to respond to this request. For that reason, the Union later attempted to clarify its request with timeframes and individuals involved. <u>Id</u>.

Hughes' statement that delays "crippled" the Union's ability to represent its employees is nothing more than gratuitous and refuted by the fact that he admits that he (1) regularly requested information before either investigating grievances or even speaking to a grievant; (2) failed to review or evaluate information provided to him; and (3) refused to schedule local level hearings, as agreed, until he received thousands of documents that he had no intention of using. Tr. at 109, 151, 213, 322, 429-31, 464-65, 504, 509-10.

D. UPS Did Not Intentionally Fail to Produce Responsive Documents Responsive in Order to Reduce its Overtime Costs.

The General Counsel also argues that UPS intentionally failed to produce documents responsive to information requests in order to reduce its overtime costs. This argument is weak because nothing in the record supports it and nowhere in the ALJ's Decision is this purported "motive" ever mentioned or suggested. Also, it is refuted by the ALJ's finding that UPS had "repeatedly attempted to respond to the myriad of information requests that are in issue." See ALJ Decision at 18. The fact that UPS disputes the underlying merits of shifter-related grievances in no way proves that it deliberately withheld necessary and relevant information from the Union.

Furthermore, it is unclear what information the General Counsel contends UPS failed to produce as directed by the SRAPGC Panel. There is nothing in the record supporting this contention other than Hughes' baseless assertion that UPS did not produce some unidentified documents by an undefined date that was purportedly set by the Panel at some undetermined point in time. Tr. at 62.

CONCLUSION

The totality of the record evidence demonstrates that the Union utilized the information request process in bad faith, and that the ALJ's findings and conclusions must be reversed and the Complaint dismissed.

s/ Aron Z. Karabel

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via electronic mail upon:

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this the 9th day of December, 2013.

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